

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

INTERPARKING INCORPORATED

and

Case 5-CA-28844

PARKING AND SERVICE WORKERS
UNION, LOCAL 27 a/w HOTEL EMPLOYEES
AND RESTAURANT EMPLOYEES
INTERNATIONAL UNION, AFL-CIO

Thomas P. McCarthy, Esq.,
for the General Counsel.
William G. Miossi and
John R. Ates, Esqs.
(Winston and Strawn), of
Washington, D.C., for Respondent.
Roxie Herbakian, for the Union.

DECISION

Statement of the Case

WILLIAM G. KOCOL, Administrative Law Judge. This case was tried in Washington, D.C. on March 2, 2001. The charge and amended charge were filed on February 24 and May 9, 2000, respectively.¹ The complaint² was issued October 25, 2000. It alleges that on about October 15, 1999,³ Interparking Incorporated (Respondent) violated Section 8(a)(1) of the Act by soliciting employee complaints, promising employees increased benefits, and improved terms and conditions of employment in order to discourage employees support for Parking and Service Workers Union Local 27, a/w Hotel Employees and Restaurant Employees International Union, AFL-CIO (the Union). Respondent filed a timely answer that, as amended at the hearing, admitted the allegations of the complaint concerning commerce and jurisdiction and the agency and supervisory status of Melissa Silver-Ward, Respondent's director of human resources. Respondent's answer denied the Union's labor organization status

¹ Respondent denied the filing and service of these documents. However the formal papers support my findings above.

² The complaint included AV Valet, Inc. d/b/a Atlantic Valet in the caption and introductory paragraph. However, at the hearing I struck reference to AV Valet from the complaint.

³ All dates are in 1999 unless otherwise indicated.

and denied the substantive allegations of the complaint. Respondent also pled a number of affirmative defenses among them was that the complaint was barred by a prior settlement.⁴

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and Respondent, I make the following

Findings of Fact

I. Jurisdiction

Respondent, a corporation, is engaged in the business of operating parking facilities in Washington, D.C. and throughout the United States. It annually performs services valued in excess of \$50,000 outside the District of Columbia. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Respondent denied that the Union is a labor organization. However, the undisputed testimony shows that the Union is an organization in which employees participate and which exists for the purpose of dealing with employers concerning wages and other conditions of work. I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. *Preliminary Matters*

Respondent asserts that the allegations of the complaint are barred because they have been settled. In support of that assertion Respondent filed a motion to dismiss the complaint prior to the hearing. I denied that motion. Respondent renews that argument in its brief. The facts show that the General Counsel originally issued a complaint against Respondent and named AV Valet as a joint and/or single employer with Respondent. At the time of the unfair labor practice, AV Valet was a subsidiary of Respondent. However, at some point not indicated in the record, AV Valet ceased to be a subsidiary of Respondent and became a wholly separate business entity. On September 28, 2000, after AV Valet ceased to be a subsidiary of Respondent, AV Valet signed an informal settlement agreement that settled a number of alleged violations. In the notice to employees, AV Valet pledged, among other things, not to promise employees increased benefits by soliciting grievances to discourage membership in the Union.

Respondent, however, refused to enter into the settlement. Nonetheless, Respondent argues that the settlement agreement, bars prosecution of the complaint

⁴ Respondent also asserted that the complaint was barred by Sec. 10(b), but at the hearing Respondent withdrew that assertion.

5 against it, citing *Hollywood Roosevelt Hotel*, 235 NLRB 1397 (1978). Had Respondent entered into the settlement agreement Respondent's argument would surely be meritorious. Respondent's attempts overcome this point by showing that the General Counsel had earlier alleged that Respondent and AV Valet were a single employer that therefore, in effect, AV Valet entered into the settlement agreement on Respondent's
10 behalf. The difficulty with this argument is that the evidence does not support this contention. It is clear that at the time AV Valet signed the settlement agreement it was not speaking on Respondent's behalf. Indeed, Respondent has presented no evidence to the contrary. I conclude that the settlement bar doctrine applies only those charged parties who have entered into a settlement, either directly or by operation of law. It follows that the complaint allegations directed at Respondent's conduct have not been settled and remain unremedied.

15 Respondent also argues that the complaint should be dismissed because it was not the employer of the employee it allegedly coerced. However, the Board has held that an employer may violate the Act by its actions affecting employees other than its own. *International Shipping Ass.*, 297 NLRB 1059 (1990), and cases cited therein. Thus, Respondent's argument is without merit. I now address the merits of the case.

20 *B. Facts*

25 As indicated, Respondent operates parking facilities. Melissa Silver-Ward, Respondent's human resources director, is based in Washington, D.C. Her duties include policy development and implementation, recruitment and retention, and benefits administration.

30 Silver-Ward has an office located in downtown Washington, D.C. There, Respondent employs Dana Christian as a receptionist. Visitors use the reception area to fill out employment applications and otherwise transact business with Respondent. AV Valet also had offices in the same area and shared the same reception area with Respondent. Employees of AV Valet came to the office reception area to pick up their paychecks. Christian distributed the checks to the AV Valet employees.

35 David McCrowey worked as a parking attendant at AV Valet in October 1999. During the week of October 6, McCrowey was working at a major fundraising event with over 20 other employees. McCrowey told these employees, many of whom were new, that one of AV Valet's supervisors had a history of stealing the tips that the employees received. That supervisor then approached McCrowey, took him away from the group, and told him that he could not talk about the Union on the job. McCrowey protested that
40 he had First Amendment rights and that he could talk about whatever he wanted to talk about. Later that day the supervisor again approached McCrowey and led him away from the other workers. On this occasion AV Valet's vice president was present. The vice president said that he had heard that McCrowey had been talking about the union. McCrowey admitted that he had done so and again asserted that he could talk about whatever he wanted. The vice president replied that it was not the time or place to talk
45 about the union. McCrowey then contacted the Union and on October 8 he distributed union literature in front of the building that housed the offices of Respondent and AV Valet to employees as they came to pick up their paychecks. On that occasion and

subsequent paydays, McCrowey urged the employees to support the Union as the employees congregated outside the building and bought snacks from a street food vendor.

5 The events of October 15 are in dispute. That day, McCrowey again went to the office to obtain his paycheck. McCrowey testified that this time Christian told him that he could not get his check until he first spoke to Silver-Ward but that Silver-Ward was not available to speak with him. McCrowey asserts that he then left the office area and went outside the building to join other employees who were going to cash their checks or leave for worksites. McCrowey claims that he told the employees that he could not join them because he had to wait to speak with Silver-Ward. McCrowey then returned to the office area where he waited about 1 hour before he finally met with Silver-Ward. McCrowey entered Silver-Ward's office and after introductions they sat down. According to McCrowey, Silver-Ward began "fumbling for words." This led him to conclude that she wanted to discuss the union organizing effort. He asked what the meeting was about, and he asked if it was about the Union. McCrowey testified that Silver-Ward replied, "Well, tell me what's wrong with AV. Maybe we can change it." McCrowey laughed and then explained that he did not like money being deducted from his paycheck without his authorization, events being canceled (presumably at the last minute), and supervisors stealing tips that the employees had earned. Silver-Ward asked about the supervisor who was allegedly stealing the tips, but McCrowey became angry, stood up, asked for his paycheck, and left. McCrowey denied that he was eating or drinking in the lobby and he further denied that he had engaged in disruptive conduct there.

25 Christian testified that on October 15 she observed McCrowey in the reception area eating corn chips and drinking a soft drink. Christian testified that she regularly saw McCrowey eating in the reception area and she had admonished him that he was not supposed to be eating in the lobby area. Christian denied that she ever told McCrowey that he had to see Silver-Ward before he could receive his paycheck. Instead, she testified that the paychecks were late that day and she told McCrowey and others that the checks were not ready. There were other employees of AV Valet as well as applicants for employment in the reception area at the time. Christian testified that McCrowey was being disruptive by telling the people in the reception area that they did not want to work there because the Employer did not correctly pay its employees and paychecks were always late. Christian testified that McCrowey appeared upset and was speaking loudly. She asked him to quiet down, but he refused, so she called Respondent's president. According to Christian, Respondent's president then asked Silver-Ward to speak to McCrowey. She also testified that she did not give McCrowey his paycheck on October 15 and that she believed that Respondent's president gave McCrowey the paycheck. She explained that sometimes AV Valet supervisors would not give her a paycheck for some employees and instead the supervisor might give it directly to the employees. Christian also denied that McCrowey remained waiting in the office area until late in the afternoon waiting to see Silver-Ward.

45 Silver-Ward testified that it was reported to her that McCrowey was being rather disruptive and was eating and drinking in the reception area. She called McCrowey into her office and told him that they were in a business environment and that they liked to

maintain a level of professionalism in the reception area. She testified that she asked McCrowey to refrain from eating or drinking in the reception area and from creating a disturbance; she explained that he had a soft drink and chips with him. Silver-Ward testified that McCrowey raised the issue of the benefits he was paid, but she told him that he should raise the matter with AV Valet because she could not help him. Silver-Ward denied that she asked McCrowey any questions. She explained that AV Valet's vice president, Charlie Wurz, brought McCrowey to her office after Christian had complained to Wurz about McCrowey. Silver-Ward denied that she had any knowledge of McCrowey's union activity as of October 15 and she further denied that the subject was mentioned during her discussion with McCrowey that day.

I have determined to credit Christian's testimony concerning the events on October 15. In addition to my assessment of the relative demeanor of the witnesses, I conclude that Christian's testimony is logically consistent and is supported by other admitted facts. For example, the record shows that there was a street food vendor outside Respondent's office, that McCrowey and other employees congregated there and had purchased food there. These facts make it at least plausible that McCrowey was in fact eating and drinking in the reception area on October 15. McCrowey also admitted that he had been vocal and insistent about expressing his views prior to October 15. It, therefore, seems plausible that he would continue to do so in the reception area.⁵ Also, although McCrowey testified that he went outside and told the other employees that he was going to be delayed because he had to see Silver-Ward, the General Counsel presented no corroboration on this point.⁶

This takes us to the meeting between McCrowey and Silver-Ward. My assessment of their relative demeanor as witnesses was that they were about equally unconvincing. Silver-Ward testified that McCrowey entered her office with a soft drink and chips; McCrowey denied this. It follows from my findings above that it seems likely that Silver-Ward's testimony is more accurate on this point. In addition, I have concluded above that it is likely that McCrowey was not fully accurate in his testimony concerning the earlier events in the day. Although I am unable to credit Silver-Ward's testimony in its entirety, based on the entire record including my observation of the witness's demeanor, I cannot credit McCrowey's testimony either. Although the General Counsel bears the burden of presenting credible evidence to support the allegations in the complaint, I conclude that he has failed to do so. I shall, therefore, dismiss the complaint.

On these findings of fact and conclusions of law and on the entire record, I issue the following⁷

⁵ Of course, that conduct may be protected under Sec. 7. I make this point only in assessing the credibility of McCrowey's testimony.

⁶ I am not drawing an adverse inference against the General Counsel; I am only describing why I conclude I am unable to credit the General Counsel's witness on this point.

⁷ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in

Continued

ORDER

The complaint is dismissed.

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Dated, Washington, D.C. April 12, 2001

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William G. Kocol
Administrative Law Judge

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Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.